

**THIRD INTERGOVERNMENTAL AGREEMENT  
ON  
PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996 BETWEEN  
THE LOWER ELWHA KLALLAM TRIBE AND THE  
WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

**PREAMBLE**

The Lower Elwha Klallam Tribe (hereinafter the Tribe) and the Washington State Department of Social and Health Services, (hereinafter the Department) signed their first Intergovernmental Agreement for Temporary Assistance for Needy Families effective October 1, 1998 to transfer State Maintenance of Effort funds and to work in partnership to coordinate state and tribal benefits and services. The second Agreement was signed September 27, 2001. The Lower Elwha Klallam Tribe has approval from the United States Department of Health and Human Services (hereinafter DHHS) to continue administration of their Tribal Family Assistance Plan for an additional three years. The Lower Elwha Klallam Tribe and the Department have negotiated this Third Intergovernmental Agreement.

**I. AUTHORITY**

**THIS AGREEMENT** is entered into between the Department of Human Services of the Lower Elwha Klallam Tribe and the Washington State Department of Social and Health Services. The Lower Elwha Klallam Tribal Council by Tribal Resolution has authorized the Tribe's Department of Human Services to enter the Agreement. The Interlocal Cooperation Act, RCW 39.34, permits any state agency to enter into a cooperative agreement with an Indian tribe for their mutual advantage and cooperation. RCW 74.080A.040 authorizes the State to coordinate and cooperate with eligible Indian tribes that elect to operate a Tribal TANF program as provided for in P.L. 104-193 and to transfer a fair and equitable share of maintenance of effort funds to the eligible Indian tribe. The Department and the Tribe desire to enter into this Agreement pursuant to their respective authorities, which include financial assistance and employment and training services to eligible, needy families in order to fulfill the purpose set out herein. It is the intention of the parties that this Agreement be liberally construed to effectuate its intent and purposes.

The Department and the Tribe each have jurisdiction over domestic relations, including providing comprehensive welfare reform services and additional supportive services. The Agreement recognizes the sovereignty of the Lower Elwha Klallam Tribe and the State and each respective sovereign's interests.

Section 412 of the Social Security Act allows Indian tribes to apply to operate a Tribal TANF program. It provides Tribes with the opportunity to reform welfare in ways that work best to serve the needs of their respective service area and population. The parties recognize that their ability to serve TANF families shall be enhanced with the existing process and procedures for the transfer and exchange of services. Coordinating the regular exchange of information about identified cases from the Department to the Tribe shall assist in ensuring that tribal families receive uninterrupted services.

## **II. PURPOSE**

The purpose of the Agreement is to assist both the Department and the Tribe in carrying out their respective authorities and responsibilities. Title IV-A, Section 412 of the Social Security Act, as amended by Public Law 104-193 (Personal Responsibility and Work Opportunity Reconciliation Act of 1996) authorizes tribes to provide Tribal TANF services to all eligible Native Americans and Alaska Natives residing within a tribe's identified service area as specified in its TFAP. RCW 74.080A.040 provides state authority to coordinate and cooperate with eligible Indian tribes that elect to operate a Tribal TANF program as provided for in P.L. 104-193 and to transfer a fair and equitable amount of state maintenance of effort funds to the eligible Indian Tribe. The parties to the Agreement recognize and acknowledge that implementation of the Agreement is an appropriate exercise of the Tribe's authority as a sovereign government.

The purpose of the Agreement is to provide for the continued process and procedures established for the mutual exchange of information and to allow the Tribe to apply its own program rules and regulations in appropriate cases. The establishment of these procedures is in the best interests of the Indian families and especially Indian children who have a need to receive required financial support. The Agreement is consistent with, and is intended to further the declared national policy of moving recipients into time-limited assistance and work. At the same time, this Agreement also protects the best interest of families and children by providing an effective and efficient way by which these families and children may be maintained from the resources available to both the Department and the Tribe.

## **III. DEFINITIONS**

The Department and the Tribe agree for the purposes of this Agreement to the following definitions.

1. **Eligible Indian Tribe:** Means any tribe or intertribal consortium that meets the definition of Indian tribe as defined in P.L. 104-193 and is eligible to submit a Tribal TANF plan to the Administration for Children and Families. Indian, Indian tribe and tribal organization have the

same meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

2. TANF (Temporary Assistance for Needy Families): A program authorized by the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PL 104-193) and codified in title IV-A of the Social Security Act operated by states and Indian nations to provide financial assistance and employment and training services to eligible, needy families.
3. Tribal TANF Program: Means a TANF program developed by an eligible Indian nation, tribal organization, or consortium and approved by the Administration for Children and Families under Section 412 of the Social Security Act.
4. Lower Elwha Klallam Tribal Assets to Native Families Program: Means the Lower Elwha Klallam Tribe's program as authorized in the Tribe's federally approved TFAP to provide financial assistance and employment and training services to eligible needy families.
5. TANF Funds: Means funds authorized under Section 412(a) of Part A of Title 1 of P.L. 104-193 for each eligible Tribe.
6. PRWORA: Means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.
7. Tribal Member: Means any person who meets the eligibility requirements as a Native American Indian or Alaska Native as defined by the Tribal TANF plan and consistent with the federal law and regulations.
8. DHHS: United States Department of Health and Human Services.
9. Department: Washington State Department of Social and Health Services.
10. Service Population Area: Geographic area defined in the Tribal TANF Plan.
11. Retrocession: Means the process by which an Indian nation voluntarily terminates and cedes back (or returns) a tribal TANF program to the appropriate state and federal entities, consistent with federal regulations. Retrocession includes the voluntary relinquishment of the authority to obligate previously awarded state and federal funds before that authority otherwise expires.
12. TFAP (Tribal Family Assistance Plan): Means the plan for implementation of the Tribal TANF program under Section 412(b) of Part A of Title 1 of P.L. 104-193.
13. State Maintenance of Effort Funds (MOE): Means the expenditures of state funds that must be made in order to meet the MOE requirement at section 409(a)(7) of Part A of Title 1 of P.L. 104-193.

#### **IV.**

#### **THE DEPARTMENT AND THE TRIBE AGREE TO THE FOLLOWING:**

Both the Department and the Tribe represent that they have the authority to enter into the Agreement.

The Tribe shall provide Tribal TANF services to all eligible Native American Indians and Alaska Natives families residing within the Tribe's service area as defined in its federally approved TFAP. The Tribe's service area is defined as follows: Said area extends from the Hoko River on the west, to McDonald (aka McDonnell) Creek on the east, and from the Strait of Juan de Fuca on the north, to the northern boundary of the Olympic National Park on the south.

The Tribe has an approved TFAP, which is incorporated by reference. There have been no changes in the Tribe's service area and the scope of the TANF plan will not be substantially changed in its 2004-2007 Tribal Family Assistance Plan.

If the Tribe makes a revision to its TFAP that requires notification to DHHS, the Tribe shall also notify the Department of such revision. The Department and the Tribe shall negotiate and reach agreement regarding any revisions or modifications to the TFAP at the same time that they give notice to DHHS, if the proposed change may impact the amount of federal funds received by the Department. The Tribe shall provide the Department with a copy of the proposed revisions.

The Department and the Tribe determined that there were 120 tribal families receiving public assistance benefits in 1994, based on the Tribe's identified service population as identified in their TFAP.

The Department agrees to transfer to the Tribe in state funds, a total of \$729,811 each year for the next three years. The annual amounts will be paid in quarterly installments to the Tribe, upon submission of a department voucher (A-19), payments to be made at the beginning of each calendar quarter, in accordance with the State MOE Payment Schedule, Exhibit A, attached and incorporated. Included within the State funds listed above is \$351,759 to provide increased funding for each year of this Agreement due to current caseload that exceeds the 1994 annual unduplicated agreed upon AU count. State Funds provided to the Tribe are to be expended according to federal regulations and are subject to State MOE claim. The total federal and state financial commitment during the three years of the Agreement is \$3,693,462. Included within the annual funding stated above, the Department agrees to pay to the Tribe Funding Based upon Unique Needs (formerly Enhanced Funding) of \$127,437 for each of the three years.

The Department and the Tribe will negotiate a quarterly reconciliation process and methodology for eligible tribal TANF families identified in the Lower Elwha Klallam Tribe's federally approved tribal TANF plan and served by the Department during the agreement period. If the results of the process indicate any needed adjustments, they will be made to subsequent payments.

In addition, the Department and the Tribe will negotiate and establish criteria and outcomes for measurements of success and will establish a mechanism that will enable the Department to know how the Tribe has used the State's maintenance of effort funds and the number of eligible families served with the funds, as required by the November 27, 2000 TANF Policy Announcement (No. TANF-ACF-PA-00-4) issued by the U.S. Department of Health and Human Services, and incorporated by reference.

The parties commit to developing the process and procedures for reconciliation, measurements of success and a reporting mechanism for State MOE funds within six months of signing this Agreement.

Based on recent changes in policy, the Department and the Tribe agree to negotiate a data share agreement.

## **V. IMPLEMENTATION AGREEMENTS**

The Department and the Tribe agree to negotiate a continuing Operational Agreement describing the working relationship between the Department of Social & Health Services Region 6 and the Tribe, including procedures for the coordination of services that shall be performed by each party. This Operational Agreement shall also include an Information and Data Sharing Protocol. The protocol shall include provisions identifying State and Tribal confidentiality protections and provisions to ensure that a family receiving assistance under the Tribe's plan may not receive assistance from other state or tribal TANF programs.

The Department (through the Division of Child Support) and the Tribe negotiated a Child Support Enforcement Agreement that provides a mechanism for the Department to provide child support enforcement services to the Tribe's TANF recipients and for how monies collected shall be distributed. The Division of Child Support shall provide all of their child support services including locate, paternity establishment, modification, establishment of child support orders and enforcement, unless otherwise specified in the Child Support Enforcement Agreement. It is the Tribe's intention to develop its own child support enforcement program as soon as it is feasible.

## **VI. RESPONSIBILITIES OF THE TRIBE**

The Tribe shall provide TANF services as described in its federally approved TANF Plan. The Tribe shall comply with all applicable federal regulations governing the use of federal funds as they pertain to tribal governments.

Consistent with its federally approved TFAP, the Tribe shall make the final determination of whether its families meet the eligibility criteria for Tribal TANF services.

For each case referred to the Tribe by the Department, the Tribe shall give notice of either accepting the case from the Department as one of its cases or making a referral back to the Department of the case within five (5) working days. The Tribe shall notify the Department in writing when the Tribe does not accept a case and shall either include in its notice the reason the referral does not meet the Tribe's family eligibility requirement or attach a copy of the denial letter.

The Tribe shall provide the Department with a list and description of the current eligibility for Tribal TANF services. If and when changes or revisions of such eligibility occur, the Tribe shall promptly inform the Department of these changes or revisions.

If the Tribe requests an amendment to its TFAP which would have a significant financial impact on the Department, the Tribe shall also notify the Department of such request and provide a copy of the proposed amendment. The Department and the Tribe shall negotiate and reach agreement regarding any amendments to the TFAP, which would have an impact on this Agreement before the Tribe implements the amendment. The Tribe agrees to give the Department notice when such amendments are approved or disapproved.

If the Tribe chooses to terminate or retrocede its Lower Elwha Klallam Tribal Assets to Native Families Program prior to the end of its three-year plan, it agrees to provide the Department with notification at the same time that it notifies the Secretary of HHS. All future scheduled State funded payments shall be discontinued and any State MOE funds not expended or obligated on Tribal TANF activities as of termination or retrocession date shall be returned to the Department within 45 days of the termination or retrocession date.

## **VII. RESPONSIBILITIES OF THE DEPARTMENT**

The Department shall continue to refer potentially eligible Tribal TANF families to the Tribe's TANF program as outlined in the established Operational Agreement.

The Department shall provide the Tribe's TANF recipients with equitable access to Medical Assistance and Basic Food Program eligibility determination and distribution services. The Department shall also provide equitable access to the benefits of the Department's childcare program including program eligibility and payment for childcare providers based on state law.

The Department shall provide the Tribe with a list and description of the current eligibility for State funded TANF services. If and when changes or revisions of such eligibility occur, the Department shall promptly inform the Tribe of these changes or revisions.

## **VIII. CONFLICT RESOLUTION**

The Department and the Tribe understand that there may be times when a question may be raised by either party regarding the appropriateness of a referral, either from the Department to the Tribe or from the Tribe to the Department. The Department and the Tribe acknowledge that there may be instances in which either the Department or the Tribe has not complied with the conditions of this Agreement or that clarification is necessary to interpret provisions of this Agreement. In such instance, the Department and the Tribe shall attempt to resolve the matter through discussions. If unsuccessful, the Department and the Tribe agree to refer the matter to non-binding mediation.

Either party may request that a mediator be selected to assist in resolving any conflict or dispute. The mediator shall be jointly selected and shall be approved by both the Department and the Tribe. The cost of a mediator shall be borne equally by the Department and the Tribe.

If the mediator cannot resolve the conflict or dispute then the issue shall be brought before a Disputes Board. The Disputes Board shall consist of three (3) individuals, one (1) selected by the Department, one (1) selected by the Tribe and a third party to be chosen by the first two. The Disputes Board shall review all issues, concerns and conflicts with a goal to determine acceptable solutions for both parties. The decisions of the Disputes Board shall be final and binding on both parties.

During the period of any dispute, the Agreement will remain in effect. Any funds due back to the Department as a consequence of the decision of the Dispute Board will be reimbursed to the Department within 45 days.

## **IX. EXECUTION, AMENDMENT, WAIVER AND TERMINATION**

This Agreement may be reviewed annually at the request of either the Department or the Tribe. This Agreement may be altered, amended or any provision may be waived by written agreement signed by both parties.

This Agreement is for three years. During this time, TANF will be reauthorized at the federal and state level. If there are changes to the federal or state TANF legislation or funding structure that significantly impact either party, each reserves the right to renegotiate this Agreement. Payments are subject to the availability of adequate federal and state funds. DSHS may renegotiate this Agreement subject to the new funding limitations and conditions by providing forty-five (45) calendar days' written notice.

This Agreement incorporates the Indian Nation and DSHS Agreement Lower Elwha Klallam #0082-44130 Regarding General Terms and Conditions by reference, including but is not limited to, the provisions for Termination Due to Change in Funding, Termination for Convenience, and Termination for Default. For this Agreement, either party may terminate the Agreement by giving the other party forty-five (45) calendar days' written notice.

## X. TERM

The period of performance for **THIS AGREEMENT** is from October 1, 2004 to September 30, 2007, unless extended, or terminated prior to that date, as provided herein.

The following representatives by virtue of their respective representative capacities hereby approve this Agreement as affirmed by their signatures below.

Frances G. Charles  
FRANCES G. CHARLES  
CHAIR  
Lower Elwha Klallam Tribe

October 11, 2004  
Date

Cecile Greenway  
CECILE GREENWAY  
Human Services Director  
Lower Elwha Klallam Tribe

October 11, 2004  
Date

Dennis Braddock  
DENNIS BRADDOCK  
SECRETARY  
Department of Social & Health Services

10/18/04  
Date

Deb Bingham  
DEB BINGAMAN  
ASSISTANT SECRETARY  
Economic Services Administration

10-18-04  
Date



8/19/2004 proposal

LOWER ELWHA KALLAM TRIBAL TANF PROGRAM

STATE MOE PAYMENT SCHEDULE

EXHIBIT A

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FIRST YEAR OF AGREEMENT 10/1/04 - 9/30/05

STATE FUNDS

OCT. 1- DEC. 31, 2004	\$182,452.75
JAN. 1 - MARCH 31, 2005	\$182,452.75
APR. 1 - JUN. 30, 2005	\$182,452.75
JULY 1, - SEPT. 30, 2005	\$182,452.75
<b><u>TOTAL FIRST YEAR</u></b>	<b>729,811.00</b>

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SECOND YEAR OF AGREEMENT 10/1/05 - 9/30/06

OCT. 1- DEC. 31, 2005	\$182,452.75
JAN. 1 - MARCH 31, 2006	\$182,452.75
APR. 1 - JUN. 30, 2006	\$182,452.75
JULY 1, - SEPT. 30, 2006	\$182,452.75
<b><u>TOTAL SECOND YEAR</u></b>	<b>729,811.00</b>

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THIRD YEAR OF AGREEMENT 10/1/06 - 9/30/07

OCT. 1- DEC. 31, 2006	\$182,452.75
JAN. 1 - MARCH 31, 2007	\$182,452.75
APR. 1 - JUN. 30, 2007	\$182,452.75
JULY 1, - SEPT. 30, 2007	\$182,452.75
<b><u>TOTAL THIRD YEAR</u></b>	<b>729,811.00</b>

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MAXIMUM AVAILABLE FOR THREE  
YEARS OF PAYMENTS

2,189,433.00

Langford